SINGLE BENCH

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR (C.G.)

WRIT PETITION NO. 1472 /2006

PETITIONERS

1. Mukesh Mishra, son of Shri U.K. Mishra, aged about 28 years, resident of Nutan Colony, Sarkanda, Bilaspur (C.G.)

C.R. No. 13851/06
Presented by Shri Vinod Dadhmukh
dated 10/3/06

2. Manish Mishra, son of Late S.K. Mishra, aged about 30 years, resident of Ashok Nagar, Chantidih, Bilaspur (C.G.)

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3. Santosh Shrivas, son of Shri B.P. Shrivas, aged about 30 years, resident of Chandni Chowk Kududand, Distt. Bilaspur (C.G.)

4. Rajesh Dewangan, son of Shri J.R. Dewangan, aged about 30 years, resident of Karbala, Bilaspur (C.G.)

NOTARY
T. R. NIRALA
BILASPUR (C.G.)
CG-14/17/23-9-02
OF C.G.

6

5. Shyam Lal Patel, son of Takram aged about 37 years, resident of village Bhilai, Post Jairam Nagar, Tah and Distt. Bilaspur (C.G.)

VERSUS

RESPONDENTS

1. The State of Chhattisgarh, through – the Secretary, Revenue Department, D.K.S. Bhawan, Mantralay, Raipur (C.G.)

2. The Collector, Distt. Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 1472 of 2006

Petitioners : Mukesh Mishra and others

Versus

Respondents : The State of Chhattisgarh & another

Shri P.S. Koshy, with Shri Vinod Deshmukh, Advocates for the petitioners.

Smt. Anju Ahuja, Dy. Govt. Advocate for the respondents/State.

ORDER

(Passed on 12th day of December, 2006)

1. Learned counsel appearing for the petitioners submits that the petitioners were appointed on temporary basis on the post of Section Writer in terms of para 3 of Annexure P/2. The petitioners have not filed any affidavit or any other information asto what is the nature of the documents, whether these documents are rules or statutory instructions or just guidelines for the purpose of regularization of the work.

2. On reading of para 3, it appears that the Superintendent has a power to appoint employees on temporary basis in view of the workload and in absence of sanctioned post.

3. The petitioners, in this petition, claim regularization on the post of Section Writer. The prayer itself indicates that the appointments of the

79

petitioners were not in the nature of permanent status as against available post.

4. The petitioners were accordingly appointed on temporary basis on the rate fixed by the Collector. The appointments of the petitioners were not through the advertisement or by inviting any application through any other means from all eligible candidates. It is well settled principle of law that the daily wagers, temporary or ad hoc employees have no right to the post seeking regularization and grant of regular pay scale, if their appointments were de-hors the constitutional scheme or the rules made under the proviso to Article 309 of the Constitution of India.

5. In the case of ***Secretary, State of Karnataka and others Vs. Umadevi (3) and others***[1], the Supreme Court has laid down clear enunciation of law which was followed later on in various decisions by the Supreme Court. Some are ***Accounts Officer (A&I) A.P.SRTC and others vs. P. Chandra Sekhara Rao and others***[2], ***Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadan Mandi Parishad and others***[3], ***Nagar Mahapalika (now Municipal Corpn.) vs. State of U.P. and others***[4] and ***U.P. State Road Transport Corporation vs. Man Singh***[5].

6. In the case of ***Secretary, State of Karnataka and others*** (Supra), the Supreme Court observed as under :-

> *"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary*

or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain - not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission."

7. With regard to regularization of the post, the appointments were not made in accordance with law. The appointments of the petitioners are a back door appointment, which does not have any legal sanction.

8. The Supreme Court in the case of **State of M.P. and others Vs. Yogesh Chandra Dubey and others**[6] observed in para 9, as under:-

"9. It is neither in doubt nor in dispute that the respondents were not appointed in terms of the statutory rules. Their services were taken by the officers only to meet the exigencies of situation. No post was sanctioned. Vacancies were not notified. It is now trite that a State within the meaning of Article 12 of the Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing rules. Regularization is not a mode of appointment. If any recruitment is made by way of regularization, the same would mean a back door appointment, which does not have any legal sanction.

9. This petition is devoid of merit and is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (2006) 4 SCC 1
2 (2006) 7 SCC 488
3 (2006) 7 SCC 684
4 2006 AIR SCW 2497
5 2006 AIR SCW 5159
6 (2006) 8 SCC 67

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